

STATE OF INDIANA ) IN THE LAKE COUNTY SUPERIOR COURT  
 ) CAUSE NO.:  
 )  
COUNTY OF LAKE )  
 )  
RUBEN LUNA, and )  
SYLVIA LUNA, )  
 )  
 )  
Plaintiffs, )  
 )  
v. )  
MENARD, INC., d/b/a MENARDS )  
 )  
Defendant. )

**COMPLAINT FOR DAMAGES AND JURY DEMAND**

COMES NOW, the Plaintiffs, Ruben Luna and Sylvia Luna (herein "Plaintiffs"), by counsel, Raeanna C. Spahn., and for their cause of action against Defendant Menard, Inc., d/b/a Menards (herein "Menards") states as follows:

**COUNT I.**

1. This is a civil action for injuries and damages that the Plaintiff, Ruben Luna, sustained as a result of an incident which incurred on or about March 18, 2021 at the Menards store located at 6300 Mississippi Street, Merrillville, Lake County, State of Indiana.

2. Presently, and at all times relevant to this action, Defendant, Menards, a Wisconsin corporation, owned and/or occupied the premises located at 6300 Mississippi Street, Merrillville, Indiana. Lake County, State of Indiana and conducted business at said location.

3. Presently, and at all times relevant to this action, the Plaintiff, Ruben Luna, was a resident of Lake County, State of Indiana.

4. On or about March 18, 2021, the Plaintiff was lawfully on the premises of the Defendant as an invitee and with the permission of, and for the benefit of, the Defendant.

5. On said date, due to the negligence of the Defendant, the Plaintiff, Ruben Luna, was injured when box(es) full of metal, hardware, and/or other hazardous items fell from shelves above and onto Plaintiff Ruben Luna's head and body.

6. The Defendant had a duty to the Plaintiff to maintain the premises, including but not limited to, its aisles, shelving, and storage of objects and/or merchandise, in a reasonably safe condition and that the Defendant was negligent regarding same.

7. The Defendant's negligence includes, but is not limited to, the following:

- a. Failing to provide a reasonably safe walking area for their invitees;
- b. Not repairing or fixing dangerous or damaged shelving, which pose a hazard to their invitees;
- c. Stacking and/or storing boxes in an unsafe or dangerous manner which posed a hazard to their invitees;
- d. Failure to exercise reasonable care to discover a dangerous condition which provided an unreasonable risk of harm to the Plaintiff;
- e. Failing to operate the establishment in a reasonably careful and prudent matter;
- f. Failure to exercise reasonable care to protect business invitees against danger, when the Defendant knew, or should have known that its invitees would not realize the danger or would fail to protect themselves against the danger;
- g. Failing to follow recommendations that would prevent this aforementioned hazard;
- h. Failing to use the requisite degree of care that a reasonably prudent person would have used under the same or similar conditions;

- i. Failure to exercise reasonable and prudent care for the safety of their business invitees;
- j. Negligent hiring and/or training and/or supervision of individuals, employees, or other entities; and/or
- k. Failure to comply with the doctrine of spoliation of evidence, pursuant to Indiana Law, to maintain and preserve evidence.

8. As a direct and proximate result of Defendant, Menards', negligence, the Plaintiff, Ruben Luna, suffered injuries, some which are permanent, has incurred, and will continue to incur, medical expenses for care, testing, and treatment, has suffered and will continue to suffer loss of wages and earning ability, and an inability to engage in normal daily activities for an indefinite period of time.

9. As a direct and proximate result of Defendant, Menards', negligence, the Plaintiff, Ruben Luna, has incurred, and will continue to incur, pain, loss of enjoyment of life, and emotional and mental suffering associated with his injuries for an indefinite period of time.

10. As a direct and proximate result of Defendant, Menards', negligence, the Plaintiff, Ruben Luna, has been damaged.

WHEREFORE, the Plaintiff, Ruben Luna, by Counsel, requests trial by jury and demands judgment against Defendant, Menard, Inc., d/b/a Menards, and prays as follows:

- 1. For reasonable compensatory damages;
- 2. Interest allowable by law, including both pre-judgment interest and post-judgment interest;
- 3. For the costs of this action; and
- 4. For all other just and proper relief in these premises.

**COUNT II.**

11. Plaintiffs reincorporate and re-allege, by reference, all paragraphs of the Court I of the Plaintiffs' Complaint as set forth above.

12. Plaintiffs, Ruben Luna, and Sylvia Luna are married, and at all times relevant herein, were married as husband and wife.

13. As a direct and proximate result of the Defendant, Menards', negligence and the injuries, including bodily injuries and permanent injuries, received by the Plaintiff, Ruben Luna, the Plaintiff, Sylvia Luna, has been deprived of her spouse's services, companionship, society, and consortium during the period of his convalescence and for an indefinite further period of time, and has been damaged in an amount to be determined at the trial of this cause of action.

WHEREFORE, the Plaintiff, Sylvia Luna, by Counsel, requests a trial by jury and demands judgment against the Defendant, Menards, for the loss of her spouse's services, companionship, society, and consortium, in an amount to be determined at the trial in this cause of action, interest allowable by law, including both pre-judgment interest and post-judgment interest, court costs, and all other just and proper relief in the premises.

Respectfully submitted,  
ESKEW LAW, LLC

By: /s/ Raeanna C. Spahn  
Raeanna C. Spahn, #29496-49  
ESKEW LAW, LLC  
333 N. Alabama St., Suite 350  
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raeanna@eskewlaw.com

**DEMAND FOR TRIAL BY JURY**

COME NOW, the Plaintiffs, Ruben Luna and Sylvia Luna, by counsel, Eskew Law, LLC, and demands that this matter be tried by jury pursuant to Trial Rule 38.

Respectfully submitted,

ESKEW LAW, LLC

/s/ Raeanna C. Spahn

Raeanna C. Spahn, #29496-49

Attorney for the Plaintiff

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## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Ruben Luna and Sylvia Luna

**DEFENDANTS**

Menard, Inc. d/b/a Menards

(b) County of Residence of First Listed Plaintiff Lake County

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Eau Claire County, IN

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Raeanna C. Spahn, Eskew Law, LLC, 333 N. Alabama St., Suite 350, Indianapolis, IN 46204

Attorneys (If Known)

Jennifer E. Davis, Garan Lucow, Miller, 8585 Broadway, Ste. 480, Merrillville, IN 46410

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HfA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1332(a)(1) and 1332(b), 28 USC 1441 and 1446(b)

Brief description of cause:

Plaintiff alleges a box full of metal, hardware, and other hazardous items fell from the shelf onto his head.

**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE N/A

DOCKET NUMBER

DATE

06/09/2021

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jennifer E. Davis

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_